

SUBCOMMITTEE: SUBCOMMITTEE #1

HOUSE BILL NO. 484

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for _____)

on _____)

(Patron Prior to Substitute--Delegate Bell, Robert B.)

A BILL to amend and reenact §§ 9.1-176.1, 19.2-305.1, 19.2-368.15, and 53.1-145 of the Code of Virginia, relating to restitution; probation.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-176.1, 19.2-305.1, 19.2-368.15, and 53.1-145 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-176.1. Duties and responsibilities of local community-based probation officers.

A. Each local community-based probation officer, for the localities served, shall:

1. Supervise and assist all local-responsible adult offenders, residing within the localities served and placed on local community-based probation by any judge of any court within the localities served;

2. Ensure offender compliance with all orders of the court, including the requirement to perform community service;

3. Conduct, when ordered by a court, substance abuse screenings, or conduct or facilitate the preparation of assessments pursuant to state approved protocols;

4. Conduct, at his discretion, random drug and alcohol tests on any offender whom the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the abuse of alcohol or prescribed medication;

5. Facilitate placement of offenders in substance abuse education or treatment programs and services or other education or treatment programs and services based on the needs of the offender;

6. Seek a capias from any judicial officer in the event of failure to comply with conditions of local community-based probation or supervision on the part of any offender provided that noncompliance resulting from intractable behavior presents a risk of flight, or a risk to public safety or to the offender;

27 7. Seek a motion to show cause for offenders requiring a subsequent hearing before the court;

28 8. Provide information to assist any law-enforcement officer with the return to custody of
29 defendants placed on supervision for which a capias has been sought;

30 9. Keep such records and make such reports as required by the Department of Criminal Justice
31 Services;~~and~~

32 10. Determine by reviewing the Local Inmate Data System upon intake and again prior to discharge
33 whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to
34 submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample
35 has been taken, require an offender to submit a sample for DNA analysis; and

36 11. Monitor the collection and payment of restitution to the victims of crime for offenders placed
37 on local probation.

38 B. Each local probation officer may provide the following optional services, as appropriate and
39 when available resources permit:

40 1. Supervise local-responsible adult offenders placed on home incarceration with or without home
41 electronic monitoring as a condition of local community-based probation;

42 2. Investigate and report on any local-responsible adult offender and prepare or facilitate the
43 preparation of any other screening, assessment, evaluation, testing or treatment required as a condition of
44 probation;

45 3. Monitor placements of local-responsible adults who are required to perform court-ordered
46 community service at approved work sites;

47 4. Assist the courts, when requested, by monitoring the collection of court costs; and fines~~and~~
48 ~~restitution to the victims of crime~~ for offenders placed on local probation; and

49 5. Collect supervision and intervention fees pursuant to § 9.1-182 subject to local approval and the
50 approval of the Department of Criminal Justice Services.

51 **§ 19.2-305.1. Restitution for property damage or loss; community service.**

52 A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any
53 provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have

his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may be, for the removal and remediation associated with the illegal manufacture of any controlled substance by the defendant.

B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages. Any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-405, 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering and Buildings of the Department of General Services or the Division of Risk Management shall be admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building, monument, statuary, artwork,

or other state property in Capitol Square, or at any other property assigned to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor, Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50 years old and bordering the boundary streets.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while he is free on probation or work release or following his release from confinement. Additionally, the court may order that the defendant make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and the terms and conditions thereof. If community service work is ordered, the court shall determine the terms and conditions upon which such work shall be performed. The court shall include such findings in the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall, at the time of sentencing, obtain the social security number of each defendant.

E. At the time of sentencing, the court shall enter the amount of restitution to be repaid by the defendant, the date by which all restitution is to be paid, and the terms and conditions of such repayment on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. If the attorney for the Commonwealth participated in the prosecution of the defendant, the attorney for the Commonwealth or his designee shall complete, to the extent possible, all portions of the form excluding the amount of restitution to be repaid by the defendant and the terms and conditions of such repayment. If

the attorney for the Commonwealth did not participate in the prosecution of the defendant, the court or the clerk shall complete the form. A copy of the form, excluding contact information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request and free of charge.

F. 1. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that includes a period of active supervision, the probation agency supervising the defendant shall notify the court and the attorney for the Commonwealth of the amount of any restitution that remains unsatisfied (i) 30 days prior to the defendant's release from supervision pursuant to the terms of the sentencing order or (ii) if the agency requests that the defendant be released from supervision, at the time the agency submits its request to the court. Such notice shall be in writing and the attorney for the Commonwealth shall, if practicable, provide a copy of the notice to the victim. If any amount of restitution remains unsatisfied, the court shall conduct a hearing prior to the defendant's release from supervision. If the court finds that the defendant is not in compliance with the restitution order, the court may (a) release the defendant from supervision, (b) modify the period or terms of supervision pursuant to § 19.2-304, or (c) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306. The court shall also docket the restitution order as a civil judgment pursuant to subsection B of § 19.2-305.2 unless such order has previously been docketed. Any defendant who is released from supervision shall be subject to the provisions of subdivision 3.

2. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that does not include a period of active supervision, the court shall include in the order a date, not to exceed two years from the date of the entry of the order, on which the defendant's compliance with the restitution order shall be reviewed and the court shall schedule a hearing on such date. The court may, on its own motion, remove the case from the docket if the defendant is in compliance with the restitution order on the date of the hearing scheduled pursuant to this subdivision. If at the hearing the court finds that the defendant is not in compliance with the restitution order, the court may order the defendant confined as for a contempt for a term not to exceed 60 days. The court shall also docket the restitution order as a civil judgment pursuant to subsection B of § 19.2-305.2 unless such order has

previously been docketed. After the hearing conducted pursuant to this subdivision, the defendant shall be subject to the provisions of subdivision 3.

3. If any amount of restitution remains unsatisfied at the time of a hearing conducted pursuant to subdivision 1 or 2, the court shall continue to schedule hearings to review the defendant's compliance with the restitution order until the amount of restitution has been satisfied. The court may, on its own motion, remove the case from the docket if the defendant is in compliance with the restitution order on the date of any hearing conducted pursuant to this subdivision. If at any hearing conducted pursuant to this subdivision the court finds that the defendant is not in compliance with the restitution order, the court may order the defendant confined as for a contempt for a term not to exceed 60 days. The court shall follow the procedures set forth in this subdivision for the purpose of reviewing compliance with a restitution order by a defendant for 10 years from the date of the hearing held pursuant to subdivision 1 or 2 or the period of probation ordered by the court, whichever is longer.

4. If the court determines at any hearing conducted pursuant to this subsection that the defendant is unable to pay restitution and will remain unable to pay restitution for the duration of the review period set forth in subdivision 3, the court may discontinue any further hearings to review a defendant's compliance with the restitution order.

5. If the court determines that a defendant would be incarcerated on the date of any hearing scheduled pursuant to this subsection, the court may remove the case from the docket and reschedule such hearing on a date subsequent to the defendant's release from incarceration.

6. No provision of this subsection shall be construed to prohibit the court from exercising any authority otherwise granted by law over a defendant during any period of probation ordered by the court.

G. Unreasonable failure to execute the plan by the defendant shall result in revocation of the probation or imposition of the suspended sentence. A hearing shall be held in accordance with the provisions of this Code relating to revocation of probation or imposition of a suspended sentence before either such action is taken.

~~G.~~ H. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the

court. For purposes of this subsection, "victim" means a person who is depicted in a still or videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

~~H.~~I. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries Compensation Fund for the benefit of crime victims. The administrator shall reserve a sum sufficient in the Fund from which he shall make prompt payment to the victim for any proper claims. Before making the deposit he shall record the name, last known address and amount of restitution due each victim appearing from the clerk's report to be entitled to restitution.

~~I.~~J. If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then upon presentation by the Fund of a written request that sets forth the amount of payments made by the Fund to the victim or on the victim's behalf, the entity collecting restitution shall pay to the Fund as much of the restitution collected as will reimburse the Fund for its payments made to the victim or on the victim's behalf.

~~J.~~K. Whenever a defendant is ordered to pay restitution, any sums collected shall be used first to satisfy such restitution order and any collection costs associated with restitution prior to being used to satisfy any fine, forfeiture, penalty, or cost assessed against the defendant.

§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; lien in favor of the Commonwealth; disposition of funds collected.

Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the extent of such award, to any right or right of action accruing to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made. However, except as otherwise provided in subsection ~~I.~~J. of § 19.2-305.1, the Commonwealth shall not institute any proceedings in connection with its right of subrogation under this section within one year from the date of

commission of the crime, unless any claimant or victim's right or action shall have been previously terminated. All funds collected by the Commonwealth in a proceeding instituted pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries Compensation Fund.

Whenever any person receives an award from the Criminal Injuries Compensation Fund, the Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or his personal representative against the person, firm, or corporation who is alleged to have caused such injuries. The Fund's lien shall be inferior to any lien for payment of reasonable attorney fees and costs, but shall be superior to all other liens created by § 8.01-66.2. The injured person may file a petition or motion to reduce the lien and apportion the recovery pursuant to § 8.01-66.9. The Fund's lien shall become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to § 8.01-66.6.

§ 53.1-145. Powers and duties of probation and parole officers.

In addition to other powers and duties prescribed by this article, each probation and parole officer shall:

1. Investigate and report on any case pending in any court or before any judge in his jurisdiction referred to him by the court or judge;

2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation and instruct him therein; if any such person has been committed to the Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of probation shall include the requirement that the person comply with all conditions given him by the Department of Behavioral Health and Developmental Services, and that he follow all of the terms of his treatment plan;

3. Supervise and assist all persons within his territory released on parole or postrelease supervision, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities,

216 and, in his discretion, assist any person within his territory who has completed his parole, postrelease
217 supervision, or has been mandatorily released from any correctional facility in the Commonwealth and
218 requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to
219 the community;

220 4. Arrest and recommit to the place of confinement from which he was released, or in which he
221 would have been confined but for the suspension of his sentence or of its imposition, for violation of the
222 terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer, person
223 subject to post-release supervision or parolee under his supervision, or as directed by the Chairman, Board
224 member or the court, pending a hearing by the Board or the court, as the case may be;

225 5. Keep such records, make such reports, and perform other duties as may be required of him by
226 the Director or by regulations prescribed by the Board of Corrections, and the court or judge by whom he
227 was authorized;

228 6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person
229 subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the
230 officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the
231 abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations
232 governing the officer's exercise of this authority shall be promulgated by the Board;

233 7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the
234 Board and upon the certification of appropriate training and specific authorization by a judge of a circuit
235 court;

236 8. Provide services in accordance with any contract entered into between the Department of
237 Corrections and the Department of Behavioral Health and Developmental Services pursuant to § 37.2-
238 912;

239 9. Pursuant to any contract entered into between the Department of Corrections and the Department
240 of Behavioral Health and Developmental Services, probation and parole officers shall have the power to
241 provide intensive supervision services to persons placed on conditional release, regardless of whether the

person has any time remaining to serve on any criminal sentence, pursuant to Chapter 9 (§ 37.2-900 et seq.);

10. Determine by reviewing the Local Inmate Data System upon intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA analysis for each person placed on probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require a person placed on probation or parole to submit a sample for DNA analysis;~~and~~

11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia, would be considered a felony, take a sample or verify that a sample has been taken and accepted into the data bank for DNA analysis in the Commonwealth; and

12. Monitor the collection and payment of restitution to the victims of crime for offenders placed on supervised probation.

Nothing in this article shall require probation and parole officers to investigate or supervise cases before general district or juvenile and domestic relations district courts.

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